



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4571 (Substitute S-5)
House Bill 4576 (Substitute S-2)
House Bill 4677 (Substitute S-2)
Sponsor: Representative Wayne A. Schmidt (H.B. 4571 & 4572)
Representative Phil Potvin (H.B. 4677)
House Committee: Transportation and Infrastructure
Senate Committee: Finance

Date Completed: 5-14-14

CONTENT

House Bill 4571 (S-5) would amend the Aeronautics Code to do the following:

- **Change the tax rate on aviation fuel from three cents per gallon to 4.0% of the average wholesale price of aviation jet fuel, subject to a minimum of 12 cents per gallon.**
- **Require that rate to be set quarterly, and describe how it would have to be calculated.**
- **Delete a provision for a refund of 1.5 cents per gallon to airline operators that are operating interstate on scheduled operations.**

House Bill 4572 (S-2) would amend the General Sales Tax Act to exempt the sale of aviation gasoline, aviation jet fuel, and other aviation fuel from taxation under the Act.

House Bill 4677 (S-2) would amend the General Sales Tax Act to require that the following amounts from collections of the tax imposed at the rate of 4.0%, after other allocations and distributions, be deposited each fiscal year, beginning in fiscal year 2013-14:

- **\$28.0 million into the State School Aid Fund.**
- **\$7.0 million into the General Fund for distribution to cities, townships, and villages.**

House Bills 4571 (S-5) and 4572 (S-2) are tie-barred to each other. House Bill 4677 (S-2) is tie-barred to House Bill 4572.

House Bill 4571 (S-5)

Tax Rate

The Aeronautics Code imposes a tax of three cents per gallon on all fuel sold or used in producing or generating power for propelling aircraft using the aeronautical facilities on the land and water of the State.

The bill instead would impose a tax at the rate of 4.0% of the average wholesale price of aviation jet fuel on each gallon of aviation jet fuel, aviation gasoline, and other aviation fuel sold or used for the same purpose.

The Department of Treasury would have to determine the proposed tax rate on a calendar quarterly basis. The rate determined by the Department could not at any time be below 12 cents per gallon. Subject to that provision, the rate would have to be equal to the product of the average wholesale price and 4.0%, rounded up to the nearest 10th of one cent.

The rate determined by the Department would have to be in effect for the three-month period beginning on the first day of the first month of the calendar quarter for which the rate was determined. The average wholesale price adjustment for each quarterly period could not increase or decrease by more than 1.0% of the average wholesale price for the previous period.

The Department would have to publish notice of the tax rate applicable to a particular calendar quarter by the 10th day of the month immediately before the first month in the quarter in which the rate would be effective.

The Department would have to determine the wholesale price based on available wholesale or resale pricing data that best reflected or approximated Michigan rack prices for aviation jet fuel, as reported by the U.S. Energy Information Administration, the Oil Price Information Service, or any similar source for such pricing data, whether publicly available or available only by subscription.

A determination by the Department of the rate, wholesale price, or average wholesale price under these provisions would be presumed to be correct and would not be set aside unless an administrative tribunal or a court found the Department's determination to be clearly erroneous.

Definitions

The bill would define "aviation fuel" as any gasoline, distillate, benzine, naphtha, benzol, or other volatile and inflammable liquid produced, compounded, and used for propelling aircraft.

"Aviation jet fuel" would mean fuel that is designed for use in the operation of jet or turbo-prop aircraft and that is sold or used for that purpose. "Aviation gasoline" would mean fuel that is designed for use in the operation of aircraft other than jet or turbo-prop aircraft and that is sold or used for that purpose.

"Average wholesale price" would mean the average wholesale price per gallon of aviation jet fuel, aviation gasoline, or fuel as determined by the Department based upon a 12-month rolling average of the wholesale price of aviation jet fuel. For this purpose, the 12-month rolling average price would end on the last day of the month that was three months before the month in which the rate was determined by the Department.

"Wholesale price" would mean the price per gallon of aviation jet fuel charged by a licensed supplier to a purchaser at the time of removal from a terminal across the rack, as determined by the Department. The term would not include the tax imposed by the Aeronautics Code, the Federal excise tax imposed under Section 4081 of the Internal Revenue Code, any other Federal tax on fuel, or an environmental regulatory protection fee imposed under Section 21508 of the Natural Resources and Environmental Protection Act (which imposes that fee on all refined petroleum products sold for resale or consumption in the State).

"Rack" would mean a mechanism for delivering or removing aviation jet fuel, aviation gasoline, or other aviation fuel from a terminal.

Refund

Currently, a refund of 1.5 cents per gallon must be made to airline operators who show proof within six months after purchase that they are operating interstate on scheduled operations. The bill would delete that requirement.

House Bill 4572 (S-2)

Under the bill, the sale of aviation gasoline, aviation jet fuel, and other aviation fuel would be exempt from the tax imposed under the General Sales Tax Act. "Aviation gasoline", "aviation jet fuel", and "aviation fuel" would mean those terms as defined in Section 203 of the Aeronautics Code (the section House Bill 4571 (S-5) would amend).

The proposed tax exemption would apply notwithstanding Section 4x(1)(b) and (2) of the General Sales Tax Act. (That section provides a sales tax exemption for the sale of certain parts and equipment, excluding shop equipment or fuel, affixed to an aircraft that meets various criteria.)

House Bill 4677 (S-2)

The General Sales Tax Act prescribes a total sales tax of 6.0%. Of the total tax, 2.0% must be deposited in the State School Aid Fund (SAF) and 4.0% must be distributed as follows:

- 15% to cities, villages, and townships under the State Revenue Sharing Act.
- 50% to the SAF.

As a rule, the balance of the revenue from the 4.0% tax must be deposited in the State's General Fund; however, the Act allocates a portion of the tax collected on sales of motor fuel, motor vehicles, and motor vehicle parts and accessories to the Comprehensive Transportation Fund, and a portion of the tax collected on retail sales of computer software to the Michigan Health Initiative Fund.

Under the bill, for fiscal year (FY) 2013-14 and each subsequent fiscal year, after the required allocations and distributions were made, \$28.0 million of the collections of the tax imposed at a 4.0% rate would have to be deposited into the State School Aid Fund and distributed as provided by law.

Also, for FY 2013-14 and each subsequent fiscal year, after the required allocations and distributions were made, \$7.0 million of the collections of the tax imposed at a 4.0% rate would have to be deposited into the General Fund and distributed, upon appropriation, as provided in Article IX, Section 10 of the State Constitution.

(Under Article IX, Section 10, 15.0% of the 4.0% sales tax collected from the retail sale of tangible personal property must be used exclusively for assistance to cities, townships, and villages, on a population basis as provided by law.)

MCL 259.203 (H.B. 4571)
Proposed MCL 205.54ee (H.B. 4576)
MCL 205.75 (H.B. 4677)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would reduce sales tax revenue by between \$53.7 million and \$70.1 million per year, and increase aviation fuel tax revenue to the Aeronautics Fund by approximately \$31.6 million to \$41.7 million per year. The net impact would reduce total State and local tax revenue by between \$17.0 million and \$23.4 million per year, with a \$43.9 million to \$46.7 million reduction in General Fund revenue.

The changes in House Bill 4571 (S-5) would eliminate a tax structure that currently provides approximately \$5.1 million per year in revenue to the Aeronautics Fund. The bill also would create a new tax structure that would generate an estimated \$36.7 million to \$46.8 million in revenue for the Aeronautics Fund. As a result, the net impact of the bill would be to increase revenue to the Aeronautics Fund by between \$31.6 million and \$41.7 million per year.

Sales tax revenue from the sale of aviation fuel is distributed to several funds. The State Constitution requires 60.0% of the revenue collected at a rate of 4.0%, and 100% of the revenue collected at a rate of 2.0%, to be deposited into the School Aid Fund. The State Constitution also requires that 15.0% of collections at a rate of 4.0% be distributed to cities, villages, and townships on a per-person basis. The remainder of sales tax revenue is directed to the General Fund, although an earmark of 21.3% of the collections at a rate of 4.0% is part of the Glenn Steil Revenue Sharing Act. While that earmark is to fund statutory revenue sharing distributions, such distributions are subject to appropriation.

As a result, House Bill 4572 (S-2) would reduce SAF revenue by between \$21.5 million and \$28.1 million per year. However, House Bill 4677 (S-2) would statutorily earmark \$28.0 million of additional sales tax revenue (from sales taxes collected on goods and services other than aviation fuel) to the SAF. The net impact of the two bills would be to increase SAF revenue by between \$0.0 million and \$6.5 million per year.

Similarly, House Bill 4572 (S-2) would reduce constitutional revenue sharing (and thus local unit revenue) by between \$5.4 million and \$7.0 million per year. House Bill 4677 (S-2) would provide an earmark of \$7.0 million of sales taxes collected on goods and services other than aviation fuel to be distributed through statutory provisions that mirror the constitutional per-person distribution. Any distribution under House Bill 4677 (S-2) would need to be appropriated each year by the Legislature. If an appropriation were made, and for the full amount indicated in House Bill 4677 (S-2), the net impact on local units would be to increase local unit revenue by between \$0.0 million and \$1.6 million.

The combined effect of House Bill 4572 (S-2) and House Bill 4677 (S-2) would lower General Fund revenue by between \$43.9 million and \$46.7 million per year.

The actual changes would depend on the number of gallons of fuel consumed and the wholesale and retail prices of affected aviation fuels. To the extent that actual consumption is greater than estimated, or that prices are higher, both the revenue loss and the replacement revenue estimates would be greater. Conversely, if consumption and/or prices are lower than estimated, both the revenue loss and the replacement revenue would be lower.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.